

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PJM INTERCONNECTION, L.L.C.) Docket No. ER15-623-008

MOTION FOR LEAVE TO ANSWER AND
ANSWER OF THE PJM POWER PROVIDERS GROUP¹

Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission’s (“FERC” or the “Commission”) Rules of Practice and Procedure, 18 C.F.R. §§385.212 and 385.213 (2015), the PJM Power Providers Group (“P3”) hereby submits this Motion for Leave to Answer and Answer in the above-captioned proceeding.² P3 is filing this Answer in response to the protest of Advanced Energy Management Alliance (“AEMA”) filed on November 17, 2015 in the above-referenced Docket in response to the October 27, 2015, compliance filing by PJM

¹ P3 is a non-profit organization dedicated to advancing federal, state and regional policies that promote properly designed and well-functioning electricity markets in the PJM Interconnection, L.L.C. (“PJM”) region. Combined, P3 members own over 84,000 MWs of generation assets, produce enough power to supply over 20 million homes and employ over 40,000 people in the PJM region covering 13 states and the District of Columbia. The comments contained in this filing represent the position of P3 as an organization, but not necessarily the views of any particular member with respect to any issue. For more information on P3, visit www.p3powergroup.com.

² Although the Commission’s procedural rules do not provide for answers to comments as a matter of right, the Commission regularly allows answers where, as here, the answer provides further explanation or otherwise helps ensure a full and complete record. See, e.g., PJM Interconnection, L.L.C., 104 FERC ¶ 61,154, at P 14 (2003), on reh’g, 109 FERC ¶ 61,236 (2004); Williams Energy Mktg. & Trading Co. v. Southern Co. Servs., Inc., 104 FERC ¶ 61,141, at P 10 (2003); Ameren Servs. Co., 100 FERC ¶ 61,135, at P 15 (2002), on reh’g, 103 FERC ¶ 61,178 (2003).

Interconnection, L.L.C. ("PJM").³ AEMA makes the same policy arguments that it made previously in which the Commission addressed in its June 9, 2015 Order in this docket, and AEMA has submitted a request for rehearing on the same issue. AEMA's protest is improper and must be denied.

I. Motion to Leave and Answer

On December 22, 2014, P3 filed a doc-less Motion to Intervene in the above-captioned proceeding. P3 seeks to respond to the AEMA's procedurally and substantively deficient protest to PJM's October 27, 2015 compliance filing. P3's Answer is narrowly tailored and will ensure that the Commission has a full and complete record of this issue.

II. Answer

A. AEMA's Protest is a De Facto Collateral Attack on the Capacity Performance Order and Should be Rejected.

AEMA's call to reject PJM's compliance filing with regard to the measurement and verification ("M&V") portion of the filing and direct PJM to utilize a consistent measurement and verification methodology to apply Demand Resource Transition Auction Capacity Performance commitments with respect to both summer and non-summer periods, must be rejected as it amounts to a de facto collateral attack on the Commission's approved June 9, 2015 Capacity Performance Order.⁴

The Commission in the June 9 Order stated, "We also accept PJM's proposal to use Customer Baseline Load as the measure of a Demand Resource's performance during non-summer Emergency Action hours. We are not persuaded by AEMA's claims that it

³ *PJM Interconnection, L.L.C.*, Protest of Advanced Energy Management Alliance, Docket No. ER15-623-008, November 17, 2015. (AMEA Protest")

⁴ *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208 (2015) (the "CP Order").

is inappropriate to use an energy market measure for performance of a capacity resource. We note that the stated aim of PJM's capacity performance revisions is to tie capacity revenue to resource's performance in the energy markets during Emergency Action hours. Because Customer Baseline Load is an appropriate measure of such performance, we find that it is a reasonable measure for assessing performance and penalties during non-summer Emergency Action hours."⁵ Although the Commission was ruling on this policy with regard to Demand Response in Capacity Performance Base Residual Auction for 2018/19 and forward, and here AEMA is making the same policy argument with regard to M&V for Demand Response in the Capacity Performance Transition Auctions for the 2016/17 and 2017/18 delivery years, the Commission has made its position clear on the appropriate M&V measures.

AEMA itself explains that the Commission in the June 9, 2015 Order addressed and ruled on AEMA's issues raised earlier. Additionally AEMA states that "[o]n July 9, 2015, the AEMA filed its request for rehearing of the June 9 order. The arguments AEMA makes here in this Protest are consistent with the arguments AEMA made in its request for rehearing in Docket No. ER15-623-000. The Commission issued a tolling order on requests for rehearing of the June 9 order. Accordingly, the AEMA's request for rehearing is pending."⁶

Given the fact that AEMA's policy argument has previously been rejected in the CP Order as noted above, and is pending in its filed Request for Rehearing of the CP Order,⁷ the arguments herein

⁵ CP Order at P 180.

⁶ AEMA Protest at p. 9.

⁷ *Request for Rehearing of the Advanced Energy Management Alliance and PJM Industrial Customer Coalition*, Docket Nos ER15-623-002. (filed July 9, 2015).

clearly amount to a de facto collateral attack that must be rejected by the Commission. Both the Commission and courts have long-standing precedent disallowing collateral attacks on Commission orders.⁸ The courts have routinely held that petitioners seeking review of Commission orders "must first" petition for rehearing of those orders.⁹ And, accordingly, the proper venue to address this policy issue is in the context of the rehearing process of the Capacity Performance order. For AEMA to now in this protest attempt to make the same policy argument for Demand Response in Transition Auctions that was already rejected by the Commission for Demand Response in the Capacity Performance Base Residual Auction is a de facto collateral attack on the policy that the Commission put forth in that order and is now pending on rehearing. This is an additional "bite at the apple" that should not be considered and should be denied. As the Commission stated this June, if a party was not satisfied with the findings that the Commission made in its orders, the party's "proper recourse would have been to file requests for rehearing of those orders. [The Commission] concur[s] that [the party's] protests of the compliance filings implementing the Commission's substantive findings in those orders . . . constitute impermissible collateral attacks on those orders. . . ."¹⁰

⁸ See *Midland Cogeneration Venture Limited Partnership v Federal Energy Regulatory Commission, and Consumers Energy*, United States Court of Appeals for the District of Columbia (12-1224), February 3, 2015 ("Midland Cogen").

⁹ *Midland Cogen*, *supra*, citing, in part, *Wabash Power Ass'n, Inc. v. FERC*, 268 F.3d 1105, 1114 (D.C. Cir. 2001), at p.2.

¹⁰ *Peetz Logan Interconnect, LLC*, 151 FERC ¶ 61,282 (2015) at P 15.

B. AEMA's Protest Does Not Recognize the New Annual Obligations of Demand Response Capacity Performance Resources and Would Lead to Flawed Market Policy.

Even if AEMA could overcome the procedural infirmities of their protest, the market policies advanced by AEMA degrade reliability in PJM and overvalue annual demand response in the transition auctions. Both PJM and the Commission rejected the approach offered by AEMA for good reason. Not all demand response is created equal. Ski slopes may use large amounts of power in the winter compared with their summer demand, but most other customers use much more energy during the summer than in any other season. PJM system planners and operators have long recognized differences in customer demand throughout the year and have used the “room” between total capacity and expected demand during non-peak periods to schedule planned outages that resource owners need to prepare for upcoming peak months while still maintaining supply reliability for annual non-peak customer demands. However, conditions on a particular day during the winter may be far from planning projections (e.g. during a polar vortex event). During these critical times, PJM needs all available resources to perform. Generators need to operate to their maximum capability and Demand Response with an annual Capacity Performance commitment needs to reduce load during such events. What AEMA is asking is that because most customers may use less energy in the winter than in the summer that reduced winter use should count as their contribution to reliability in non-summer months.

PJM had recognized these seasonal differences in customer demand in their original CP filing, and had proposed that customer load drop capability be based on a combination of summer and winter demand levels. Demand Response entities strongly protested this part of the Capacity Performance proposal and the final rule as accepted by FERC continues the historic practice of measuring customer demand reduction capability solely on their historic demand on

summer peak load days. The PJM requirement that such customers be able to provide measurable energy level reductions during non-summer months is consistent with a customer usage model that is based only on their contributions to summer peak demand. To do otherwise would qualify most customers with summer only Demand Response capability as annual RPM resources even though they could not provide any load reduction to support reliability during super-peak winter load events.

The AEMA protest, if approved, would effectively ignore these differences and treat all demand response as using their entire load at peak levels all year long. Moreover, if approved, the AEMA proposal would create different M&V protocols for demand response capacity that cleared in the capacity performance transition auctions as opposed to the capacity performance base residual auctions. The end result is a degradation of reliability as PJM would be relying on demand response that is not capable of performing and overcompensating demand response by assuming consumption levels that simply are not there on an annual basis.

Additionally if the AEMA scheme was accepted, it reverses one of the primary tenets of Capacity Performance, to ensure year round performance of participating resources as well as a consistent set of performance requirements for all qualified capacity resources including demand response.¹¹

¹¹ CP Order at PP 48-49.

III. Conclusion

WHEREFORE, for the foregoing reasons, P3 respectfully requests that the Commission (1) grant P3's motion for leave to answer; and (2) consider this answer in formulating its Order on the PJM October 27, 2015 Filing.

Respectfully submitted,

On behalf of the PJM Power Providers Group

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Dated: December 2, 2015

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the Official Service List compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 2nd day of December, 2015.

On behalf of the PJM Power Providers Group

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